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**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

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| MARCI PATERA,<br>Plaintiff and Appellant,<br>v.<br>ROY BARTLETT,<br>Defendant and Respondent. | A148368<br><br>(Contra Costa County<br>Super. Ct. No. D09-03218) |

Marci Patera appeals from a judgment and post-judgment order entered in ongoing litigation with her former partner, Roy Bartlett. She argues that the trial court wrongly stopped her from continuing to receive a monthly social security disability "derivative benefit" intended to aid one of their children. She also argues that the court wrongly entered an order allowing her to refile a request for attorney fees under Family Code section 2030.[1] We reject these arguments and affirm.

## I.
## FACTUAL AND PROCEDURAL BACKGROUND

Although they never married, Patera and Bartlett lived together for a number of years and had two children.[2] They separated in 2009, and since then have been involved

[1] All statutory references are to the Family Code unless otherwise specified.

[2] We will mention only one child in referring to child-support issues because the other child has reached adulthood.

in disputes that, in the words of the trial court, "[t]o say . . . have been acrimonious and heavily litigated would be the understatement of the millennium." Shortly after the separation, Patera filed an action in family court to determine child custody, visitation, and support (case No. D09-03218). The following year, Bartlett filed a separate partition action to divide their property (case No. C10-00067). Because the partition action did not involve a marital dissolution, it proceeded in civil court separate from the family proceedings involving child custody and support. The issues in the two cases, however, overlapped, and the two unconsolidated litigation tracks caused some procedural confusion.

In 2012, the parties entered into a settlement agreement, which included a provision requiring Bartlett to pay Patera child support. But, as the trial court remarked, "Instead of ending their property disputes, [the agreement] was unfortunately the commencement of years more litigation." Eventually, the parties resolved their property disputes, and on April 13, 2016, the court ruled on their respective responsibilities for the attorney fees incurred in litigating and resolving those disputes. This ruling is not a part of the present appeal.

Meanwhile, in January 2016, Patera filed a motion requesting modification of child support and an award of attorney fees under section 2030. Bartlett opposed the request and filed his own request to modify child support.

On March 16, 2016, the parties appeared in three different courtrooms. They first appeared in family court (Department 24). The judge explained that the calculation of child support needed to be decided in the department that was specifically designated for that purpose (Department 52) because the Department of Child Support Services (DCSS) was involved and it "has a lot more experience with these issues and the enforcement of the settlement agreement." Patera stated she was also seeking attorney fees under section 2030, and the court explained that any such request should be reviewed in civil court (Department 9) "in the first instance," but if that court "determines that there are matters that I still should consider, I'm happy to do it."

The parties then appeared in civil court (Department 9). Reiterating what the family judge had said, the civil judge told them that child-support issues needed to be resolved in Department 52. Patera again stated she sought an award of attorney fees "for child support, not for this case. Not for civil. Strictly child support and custody. Strictly family law." The judge explained that the child-support issues needed to be decided before the fees issues because "courts don't usually award attorney[] fees in advance of a hearing."

The parties then proceeded to Department 52, where an evidentiary hearing was held. An attorney for the DCSS entered an appearance, and both Patera and Bartlett testified. Before the hearing, Bartlett had been paying Patera monthly child support in the amount of $1,150. Because Bartlett's income had dropped and his custodial time with the child had increased, the trial court recalculated support obligations using the statutory guideline formula. The calculation showed that going forward Patera should pay Bartlett monthly child support in the amount of $120. The court then considered a monthly "derivative benefit" that the Social Security Administration provided for the child as a result of Patera being disabled. The benefit was approximately $1,294, and it was being sent to Patera as the representative payee. After determining that Bartlett was the primary custodial parent, the trial court ordered that he, rather than Patera, should receive the derivative benefit as the child's representative payee. The court then gave Patera credit for the derivative benefit, using it to offset her $120 monthly child-support obligation. The order modifying child support was reduced to a written judgment that day.

About a month later, a hearing was held in civil court, Department 9, on Patera's motion for attorney fees. In a written order entered on April 28, 2016, the trial court ruled that, with one exception not pertinent to this appeal, attorney fees related to the parties' property disputes "were waived and settled up through November 2012, and no modification shall be granted or hearing set for that purpose." The court declined to decide Patera's request for attorney fees relating to the custody and child-support issues, however, because Patera wanted the request decided in family rather than civil court.

The court therefore ordered Patera to "refile her motion and reschedule her request for attorney[] fees relating to the present custody and child support issues before [the family court]." (Emphasis omitted.) Our record does not reveal that any such motion was filed.

Patera appeals from the judgment entered on March 16, 2016, and the post-judgment order entered April 28, 2016.

## II.
## DISCUSSION

### *A. The Standards of Review.*

We presume the correctness of the trial court's orders and indulge all intendments and presumptions to support them on matters as to which the record is silent. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) The party appealing from an order has the burden to affirmatively show error. (*Ibid*.)

To the extent the parties argue "pure questions of law, such as procedural matters or interpretations of rules or statutes, we exercise our independent judgment." (*Gordon's Cabinet Shop v. State Comp. Ins. Fund* (1999) 74 Cal.App.4th 33, 38.) But "[a]wards of child support and spousal support are reviewed for abuse of discretion. [Citation.] '[W]e do not substitute our judgment for that of the trial court, and we will disturb the trial court's decision only if no judge could have reasonably made the challenged decision. [Citation.]' [Citation.] [¶] In reviewing a child support order, 'we are mindful that "determination of a child support obligation is a highly regulated area of the law, and the only discretion a trial court possesses is the discretion provided by statute or rule." [Citation.]' [Citation.] '[T]he trial court's discretion is not so broad that it "may ignore or contravene the purposes of the law regarding . . . child support." ' " (*In re Marriage of Williamson* (2014) 226 Cal.App.4th 1303, 1312.)

### *B. The Trial Court Properly Ordered Bartlett to Receive the Child's Derivative Benefit.*

In her opening brief, Patera argues that the trial court erred in ordering Bartlett to receive the child's derivative benefit because the order was based on an "offer of proof" and section 4504, subdivision (b) (section 4504(b)), which she contends is unconstitutional. The arguments are meritless.

To begin with, Patera largely forfeited her claims by not raising them below. At the hearing, she did not object to Bartlett receiving the child's derivative benefit on the grounds that section 4504 was allegedly unconstitutional or that there was inadequate evidence. Instead, she argued that she was entitled to continue receiving the derivative benefit because she lacked resources and needed the benefit to help her travel to California to visit the child. "It is axiomatic that arguments not raised in the trial court are forfeited on appeal." (*Kern County Dept. of Child Support Services v. Camacho* (2012) 209 Cal.App.4th 1028, 1038.)

But even assuming that Patera sufficiently preserved her arguments, we reject them on their merits. We begin with an overview of how a child's derivative benefit is treated for child-support purposes. "A child not living in the same household as [a parent receiving a federal disability payment] may receive derivative benefits on account of the parent's disability. (42 U.S.C. § 402(d).) If the beneficiary is under the age of 18, the [Social Security Administration] will generally pay [these] benefits to a representative payee, preferably the custodial parent. (20 C.F.R. §§ 404.2001(b)(2), 404.2021(c)(1).)" (*Y.H. v. M.H.* (2018) 25 Cal.App.5th 300, 305, italics omitted.) California law, section 4504, subdivision (a) (section 4504(a)), makes this preference mandatory by directing the child's custodial parent to receive these payments and directing the non-custodial parent to "cooperate with the custodial parent" in completing any necessary paperwork. (§ 4504(a).)

Section 4504, subdivision (b) (section 4504(b)), in turn, instructs how the derivative benefit affects the non-custodial parent's child-support obligations: "If the court has ordered a noncustodial parent to pay for the support of a child, payments for the support of the child made by the federal government . . . because of the . . . disability of the noncustodial parent and received by the custodial parent . . . shall be credited toward the amount ordered by the court to be paid by the noncustodial parent for support of the child unless the payments made by the federal government were taken into consideration by the court in determining the amount of support to be paid. Any payments shall be credited in the order set forth in Section 695.221 of the Code of Civil Procedure." Under

this provision, the trial court has the option of choosing one of two approaches: (1) it may consider the derivative benefits in fixing the guideline formula support amount; or (2) it may allow a direct-benefit credit against the formula amount. (*In re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1162.) The court has the discretion to determine which approach is appropriate for the particular case. (*Ibid.*; see Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2018) ¶ 6:417.1, p. 6-258.) Under the second approach, a court may properly exclude the derivative benefit in calculating the amount of child support owed by the non-custodial parent, and then credit the benefit against any payments owed. (*In re Marriage of Daugherty* (2014) 232 Cal.App.4th 463, 466.) This approach is usually more advantageous to the non-custodial parent, "especially if he or she has a relatively small time-share." (Hogoboom & King, *supra*, ¶ 6:417.6, p. 6-259.)

This latter approach was the procedure the trial court employed here. The court first found that Bartlett "is currently the custodial parent." Bartlett testified that the child spent about 81 percent of his time annually with Bartlett. Patera quibbled about a few days here and there, and the court ruled that she would be attributed 20 percent as a "generous" time allocation. The court's findings that the child spent 80 percent of the time with Bartlett and that this made Bartlett the custodial parent were based on ample, and certainly substantial, evidence.[3] Consistent with section 4504(a), the court noted that "the derivative benefit is supposed to follow the child," i.e., be received by the custodial parent. The court therefore ordered Bartlett to apply for the derivative benefit and receive it going forward.

[3] Patera argues that the trial court's ruling was based on an "offer of proof." She is mistaken. Her misunderstanding may have arisen because the phrase was used by counsel for the DCSS at the hearing in describing the evidence the parties were anticipated to present before they testified.

The court then calculated the parties' child-support obligations using the statutory guideline formula.[4] Evidence was accepted that Bartlett earned $12,760 a month, and Patera received $2,587 a month in disability payments. Although Patera claimed that Bartlett's earnings were far higher, she presented no evidence to support the charge. Applying the 20/80 custodial timeshare allocation to the parties' incomes, the guideline formula showed that Patera should pay Bartlett $120 in monthly child support. The derivative benefit was not attributed to either parent in calculating the amount of support to be paid. But, consistent with section 4504(b), the court ruled that Patera's support obligation would "be covered by the derivative benefit which [Bartlett was] ordered to apply for." (See *In re Marriage of Hall & Frencher* (2016) 247 Cal.App.4th 23, 26-27.)

Patera argues that the trial court was required to allow her to continue receiving the derivative benefit because, according to her, section 4504(b) is unconstitutional. She also contends that she is entitled to be "reimburs[ed] for the over 13 months Bartlett has been receiving the derivative . . . benefit" since the date of the judgment. We disagree.

For starters, Patera's argument is baffling because it is self-defeating. Patera argues that section 4504(b)—not section 4504(a)—is unconstitutional. As we have explained, it is section 4504(a) that directs derivative benefits to be received by the custodial parent. But section 4504(b)—the provision Patera attacks—entitles disabled non-custodial parents who are obligated to pay child support, such as Patera, a credit (based on the derivative benefit) for child-support owed. (See *In re Marriage of Bertrand* (1995) 33 Cal.App.4th 437, 441 [the purpose of the statute is to mitigate the

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[4] Section 4055 sets out the mathematical formula to be applied to parents' incomes in calculating child-support obligations. (§ 4055, subds. (a), (b).) Because section 4055 "involves, literally, an algebraic formula," trial courts may use a computer program to make the calculation. (*In re Marriage of Schulze* (1997) 60 Cal.App.4th 519, 523, fn. 2.) The guideline amount of child support is presumptively correct. (*In re Marriage of de Guigne* (2002) 97 Cal.App.4th 1353, 1359.) Patera does not challenge the trial court's use of the guideline formula.

support obligation of a qualifying disabled or retired noncustodial parent].) If we were to accept Patera's argument that the provision is unconstitutional, Patera would not be entitled to the credit the trial court gave her to satisfy her $120 monthly child-support obligation. In other words, if we were to accept her argument, Patera's child-support obligation would increase, not decrease.

In any event, as inexplicable as the argument may be, we are not persuaded by it. There is nothing vague about section 4405(b), nor does it deprive disabled, non-custodial parents due process or equal protection. The void-for-vagueness doctrine is a component of the constitutional requirement of due process of law. (U.S. Const., 5th & 14th Amends.) "The underlying concern of a vagueness challenge 'is the core due process requirement of adequate *notice.*' " (*Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1180.) A vague statute cannot be upheld because "we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." (*Cranston v. City of Richmond* (1985) 40 Cal.3d 755, 763.) By any measure, section 4504(b) is not such a statute. It plainly and unequivocally directs that a child's derivative benefit "received by the custodial parent . . . shall be credited toward the amount ordered by the court to be paid by the noncustodial parent for support of the child." Disabled non-custodial parents of ordinary intelligence simply cannot be confused that their child's derivative benefit entitles them to a credit to offset child-support obligations for which they are responsible.

Patera's other constitutional arguments fare no better. Patera contends that section 4504(b) "enables a court to arbitrarily construe it in ways that raise equal protection concerns" and "treats families that include one disabled person differently than families that do not." But, as we have already discussed, the provision is unambiguous, and we see no potential for arbitrary construction. Furthermore, the provision rationally treats parents' child-support obligations differently when a child receives a derivative benefit. "In areas of social or economic policy not involving suspect classifications or fundamental rights, a statute must be upheld so long as there is any reasonably conceivable set of facts that provides a 'rational basis' for the classification."

(*420 Caregivers, LLC v. City of Los Angeles* (2012) 219 Cal.App.4th 1316, 1333-1334.) Giving a disabled non-custodial parent, such as Patera, a credit for child-support obligations as a result of a child's derivative benefit is eminently rational. The derivative benefit aids the child, and this aid is only available because of the disabled parent's disability. It is rational to allow non-custodial, disabled parents the right to offset child-support obligations with the derivative benefit, which exists only because of the parents' disability. We reject Patera's constitutional attacks on section 4504(b).

*C. The Trial Court Did Not Abuse Its Discretion in Ordering Patera to Refile Her Request for Fees Under Section 2032 in Family Court.*

Patera also appeals from the post-judgment order entered on April 28, 2016, regarding her request for attorney fees under section 2030. We review a denial of attorney fees under section 2030 for abuse of discretion. (*In re Marriage of O'Connor* (1997) 59 Cal.App.4th 877, 881.) "[W]e will not reverse absent a showing that no judge could reasonably have made the order, considering all of the evidence viewed most favorably in support of the order." (*In re Marriage of Falcone & Fyke*, (2012) 203 Cal.App.4th 964, 975.)

Patera's appeal from the order is as perplexing as it is meritless. Patera had made clear in the trial court proceedings that she sought an award of attorney fees strictly for "child support and custody. Strictly family law." The April 28 order, however, was entered by the civil court, not the family court. In its order, the court observed that Patera was seeking "attorney[] fees relating to present custody and child support. She has objected to having this Civil Court hear that request since [the] family law case has not been consolidated with the civil case,[] and wishes to have the matter set in Family Court . . . ." (Fn. Omitted.) The court then ruled that if Patera "intends to pursue present attorney[] fees, [she] shall refile her motion and reschedule her request for attorney[] fees relating to the present custody and child support issues [in family court]." (Emphasis omitted.) Nothing in the record demonstrates that Patera filed any such motion or was precluded from doing so. We can perceive of no abuse of discretion for the civil court to

have allowed Patera the ability to request fees in the appropriate family forum, which was also the forum of her choice.

## III.
## DISPOSITION

The judgment and the post-judgment order entered on April 28, 2016, are affirmed.

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Humes, P.J.

We concur:

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Margulies, J.

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Sanchez, J.